

Constitution

of

AUSCOAL Superannuation Pty Ltd  
ACN 003 566 989

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# 1 DEFINITIONS AND INTERPRETATION

## Definitions

- 1.1 The following words have these meanings in this Constitution unless the contrary intention appears.

**AMWU** means The Amalgamated Metal Workers' Union or all or part of any registered organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction of it.

**APESMA** means the Association of Professional Engineers, Scientists & Managers, Australia, its successors and assigns.

**Auditor** means the auditor (if any) for the time being of the Company.

**Board of Directors** means the Directors collectively, acting as a Board.

**CEPU** means the Communications, Electrical, Plumbers and Gas Fitters Union, incorporating the ETU, or all or part of any organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction of it.

**Chairman** means the Chairman of the Directors appointed pursuant to the Governing Rules.

**Committee** means any Director or Directors acting as a committee of Directors under clause 21.

**Company** means AUSCOAL Superannuation Pty Ltd ABN 70 003 566 989.

**Constitution** means this constitution as amended from time to time and a reference to a provision of this Constitution is a reference to that provision as amended from time to time.

**Corporations Act** means the Corporations Act 2001 (Cth) and the Corporations Regulations 2001 (Cth).

**Director** means a director of the Company, and includes an alternate director only when acting as an alternate to the Director for whom he or she was appointed.

**Deputy Chairman** means the Deputy Chairman of Directors appointed in accordance with clause 19.3.

**Employer** has the same meaning as contained in the Governing Rules.

**Employer Director** has the same meaning as contained in the Governing Rules.

**Fund** means the Mine Superannuation Fund ABN 16 457 520 308.

**Governing Rules** means the trust deed or any other document governing the Fund as amended from time to time.

**Independent Director** has the same meaning as in the Governing Rules.

**MEU** means the Mining and Energy Union, or all or part of any organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction of it.

**Member Director** has the same meaning as contained in the Governing Rules.

**Minerals Council – Coal Committee** means the NSWMC – Coal Committee, its successors or assigns.

**NSWMC** means the New South Wales Minerals Council Limited ABN 42 002 500 316.

**Participating Unions** means, AMWU, CEPU, APESMA and MEU.

**QRC** means the Queensland Resources Council Ltd ABN 59 050 486 952.

**Register** means the register of Shareholders of the Company kept in accordance with the Corporations Act.

**Related Body Corporate** has the same meaning as in the Corporations Act.

**Relevant Law** means the standards, covenants or other requirements set out in:

- (a) the Superannuation Industry (Supervision) Act 1993 (Cth);
- (b) the Income Tax Assessment Act 1936 (Cth);
- (c) the Income Tax Assessment Act 1997 (Cth);
- (d) the Corporations Act 2001 (Cth);
- (e) the Superannuation Guarantee (Administration) Act 1992 (Cth);
- (f) the Superannuation (Resolution of Complaints) Act 1993 (Cth);
- (g) the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 (NSW);
- (h) the Coal and Oil Shale Mine Workers' Superannuation Act 1989 (Qld);
- (i) any regulations made under any of those Acts; and

- (j) any other law which the Company determines is a Relevant Law.

However, if such a standard, covenant or other requirement ceases to be in force or the Responsible Authority does not require it to be complied with either generally or in relation to the Fund, then that standard, covenant or requirement ceases to be a Relevant Law to that extent.

**Representative** means a person appointed by a Shareholder to act as its representative under section 250D of the Corporations Act.

**Responsible Authority** means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

**Secretary** means a person appointed as a secretary of the Company under clause 25, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Share** means a share in the Company.

**Shareholder** means a person who for the time being is a member of the Company in accordance with the Corporations Act.

## Interpretation

1.2 In this Constitution unless the contrary intention appears:

- (a) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telegram, facsimile, electronic notification and other modes of representing or reproducing words in a visible form;
- (e) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;

- (f) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

1.3 Headings are for ease of reference only and do not affect the interpretation of this Constitution.

### **Replaceable Rules**

- 1.4 (a) The provisions of the Corporations Act that may generally apply as replaceable rules do not apply to the Company while it is the Trustee of the Fund.
- (b) If the Company ceases to be the Trustee of the Fund, the replaceable rules contained in the Corporations Act shall apply where not displaced or modified by this Constitution.

### **Purpose**

1.5 The Company must act primarily as the trustee of one or more regulated superannuation funds within the meaning of section 19 of the Superannuation Industry (Supervision) Act 1993.

## **2 SHARES**

- 2.1 (a) The Shares of the Company shall be ordinary shares.
  - (b) The issued share capital of the Company shall be divided into "A" and "B" Shares. "A" Shares shall only be issued to NSWMC and QRC. "B" Shares shall only be issued to MEU.
  - (c) "A" Shares and "B" Shares shall be ordinary shares in the capital of the Company ranking equally in all respects.
- 2.2 Subject to the Corporations Act and this Constitution:
- (a) the Directors may issue or dispose of Shares with such rights or subject to such restrictions, to such persons and on such terms as they consider appropriate;
  - (b) the Directors' power under clause 2.2(b) includes the power to issue Shares with any preferential, deferred or special rights, privileges or conditions or any restrictions in regard to voting, return of capital or otherwise;
  - (c) no Share may be held jointly; and
  - (d) if at any time the capital of the Company is divided into different classes of shares, the rights and privileges attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the

sanction of a special resolution of the holders of all of the Shares of the Company.

2.3 The Company is not required to recognise:

- (a) a person as holding a Share on any trust, except if required by law; or
- (b) any equitable, contingent, future or partial interest in the Share, except an absolute right of ownership in the registered Shareholder.

### **3 RIGHT TO CERTIFICATE**

3.1 A person whose name is entered as a Shareholder in the Register is entitled without payment to receive a certificate in respect of the Share in accordance with the Corporations Act.

3.2 The Company may issue a replacement certificate for Shares in accordance with the Corporations Act if:

- (a) satisfactory evidence has been received by the Company that the certificate for Shares previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
- (b) the Shareholder has undertaken in writing to the Company to return the certificate to the Company if it is found or received by the Shareholder.

### **4 TRANSFER OF SHARES**

#### **Instruments of transfer**

4.1 Subject to this Constitution, a Shareholder may transfer Shares by a written transfer instrument in any form approved by the Directors.

4.2 The transfer instrument must be stamped (if necessary) and executed by or on behalf of the transferor and the transferee.

#### **Registration**

4.3 The instrument must be left for registration at the Registered Office accompanied by any other information that the Directors require to establish the right of the transferor to make the transfer. The Directors may then register the transferee as Shareholder.

4.4 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register of Shareholders in respect of the Shares.

## **Restrictions on transfer**

- 4.5 The Directors may refuse to register any transfer of Shares without giving any reason. The Directors must notify the proposed transferee of the refusal.
- 4.6 If a Shareholder wishes to sell or transfer their Share, that Shareholder (“outgoing Shareholder”) must transfer all the Shares in the Company that they hold to any person nominated by the Directors against payment to the outgoing Shareholder of the price at which the Shares were issued, and the outgoing Shareholder irrevocably appoints the Secretary as the outgoing Shareholder’s attorney to do all things necessary, including the signing of a Share transfer form, to give effect to the transfer.
- 4.7 The Director must not register joint holders of a Share.

## **5 CALLING GENERAL MEETINGS**

- 5.1 Any two Directors may, at any time, call a general meeting.
- 5.2 (a) A Shareholder may only request the Directors to call and arrange to hold a general meeting in accordance with section 249D of the Corporations Act.
- (b) A Shareholder may not call or arrange to hold a general meeting except under section 249E or section 249F of the Corporations Act.
- 5.3 The Shareholders may participate in a general meeting by any technological means by which they are all able simultaneously to hear each other and to participate in discussion. The Shareholders need not all be physically present in the same venue for a general meeting to be held.

## **6 NOTICE OF GENERAL MEETING**

- 6.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days’ written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given) of any general meeting must be given to Shareholders, each Director and the Auditor.
- 6.2 A notice calling a general meeting must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting’s business;
- (c) if a special resolution is to be proposed at the meeting – set out an intention to propose the special resolution and state the resolution; and



(d) set out that a Shareholder has a right to appoint a proxy and that the proxy need not be a Shareholder.

6.3 The Directors may postpone or cancel any general meeting. However, they must give written notice of, and reasons for, the postponement or cancellation to everyone entitled to receive notices from the Company.

6.4 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to anyone referred to in clause 6.1 or the non-receipt of a notice (or form) by anyone referred to in clause 6.1 above does not invalidate the proceedings at or any resolution passed at the general meeting.

## **7 QUORUM**

7.1 No business may be transacted at a general meeting unless a quorum of Shareholders is present when the meeting proceeds to business.

7.2 A quorum of Shareholders occurs when MEU, NSWMC and QRC are present, whether in person or by proxy, attorney or Representative.

7.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

(a) if the general meeting was called on the requisition of Shareholders, it is automatically dissolved; or

(b) in any other case:

(i) it will stand adjourned to the same time and place seven days after the general meeting, or to another day, time and place determined by the Directors; and

(ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, it is automatically dissolved.

7.4 All business arising at any general meeting shall be determined only by resolution put to the vote of the meeting.

## **8 CHAIRMAN**

8.1 The Chairman is entitled to preside at general meetings. If the Chairman is not present within 15 minutes after the time appointed for a meeting or is unable and unwilling to act, the following may preside (in order of entitlement):

(a) the Deputy Chairman;

(b) a Director chosen by a majority of the Directors present;

- (c) the only Director present; and
- (d) a Shareholder, proxy, attorney or Representative present chosen by the Shareholders, proxies, attorneys and Representatives present.

8.2 The Chairman of the meeting is not entitled to a casting vote.

## **9 ADJOURNMENT**

9.1 The Chairman of a general meeting at which a quorum is present may adjourn the meeting:

- (a) in his or her discretion with the meeting's consent; and
- (b) if the meeting directs him or her to do so from time to time and from place to place.

9.2 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

9.3 If a general meeting has been adjourned for more than 30 days:

- (a) notice of the adjourned meeting shall be given as in the case of an original meeting; and
- (b) except as provided in paragraph (a) it shall not be necessary to give any notice of the adjournment or of the business to be transacted at an adjourned meeting.

## **10 VOTES OF SHAREHOLDERS**

10.1 Subject to the provisions of the Corporations Act in relation to special resolutions which require at least three quarters of the votes to be cast in favour for such a resolution to be carried, a resolution is taken to be carried if more than half of the votes cast are in favour of the resolution.

10.2 Subject to the provisions of the Corporations Act in relation to the right to demand a poll, every question put to a meeting is to be decided by a show of hands.

10.3 Subject to any rights or restrictions attached to or affecting any Shares, at any general meeting each Shareholder has one vote. A vote may be given by each Shareholder personally or by proxy, attorney or Representative.

10.4 In the case of an equality of votes, the Chairman of the meeting shall not be entitled to a second or casting vote.

10.5 No objection may be raised to the right of a person to attend or vote at a meeting except at that meeting. Every vote not disallowed at the meeting is valid.

10.6 If there is a dispute as to the admission or rejection of a vote, the Chairman of the meeting must decide it. The Chairman's decision, made in good faith is final and conclusive.

10.7 Unless a poll is demanded:

- (a) a declaration by the Chairman that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting, are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

10.8 The demand for a poll may be withdrawn.

10.9 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

## **11 AUDITOR'S RIGHT TO ATTEND GENERAL MEETINGS**

If an Auditor has been appointed, the Auditor or any authorised agent of the Auditor is entitled to:

- (a) attend any general meeting;
- (b) receive all notices and other communications relating to any general meeting which a Shareholder is entitled to receive; and
- (c) be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity (even if the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting).

## **12 DIRECTORS' RIGHT TO ATTEND GENERAL MEETINGS**

A Director is entitled to:

- (a) attend any general meeting;
- (b) receive all notices of and other communications relating to any general meeting which a Shareholder is entitled to receive; and
- (c) be heard at any general meeting on any part of the business of the meeting.

## **13 RIGHT TO APPOINT PROXY OR ATTORNEY**

13.1 A Shareholder entitled to attend a meeting of the Company is entitled to appoint any person (whether a Shareholder or not) as proxy or attorney to

attend the meeting in the Shareholder's place. A proxy or attorney has the same right as the Shareholder at the meeting.

- 13.2 A proxy or attorney may vote or abstain as he or she chooses except where the appointment of the proxy or attorney directs the way the proxy or attorney is to vote on a particular resolution. If an appointment directs the way the proxy or attorney is to vote on a particular resolution the proxy or attorney must vote that way.
- 13.3 An instrument appointing a proxy or attorney must be in writing in a form acceptable to the Directors.
- 13.4 In the case of a proxy, the instrument is valid if it contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 13.5 If the Directors permit, the instrument of proxy or attorney may take effect for more than one meeting.
- 13.6 A vote cast in accordance with an instrument appointing a proxy or attorney is valid even if before the vote was cast the appointor:
- (a) died;
  - (b) became of unsound mind;
  - (c) has entered external administration;
  - (d) revoked the proxy or power; or
  - (e) transferred the Shares in respect of which the vote was cast, unless any written notification of the death, unsoundness of mind, external administration, revocation or transfer was received by the Company before the relevant general meeting or adjourned general meeting.
- 13.7 A Shareholder may not appoint more than one person to attend a meeting in their place (whether that person is a proxy, attorney or Representative).

## **14 REPRESENTATIVES OF CORPORATIONS**

- 14.1 Any Shareholder that is a corporation may appoint an individual as its Representative as provided by the Corporations Act. If a Shareholder corporation does so:
- (a) its Representative may exercise at the relevant general meeting all the powers which the Shareholder corporation could exercise if it were a natural person; and

- (b) when its Representative is present at a meeting, the Shareholder corporation will be considered to be personally present at the meeting.

14.2 The Chairman of a general meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the Chairman of the general meeting his or her status as a Representative within a period prescribed by the Chairman of the general meeting.

14.3 The appointment of a Representative may set out restrictions on the Representative's powers.

## **15 WRITTEN RESOLUTIONS**

15.1 Subject to the Corporations Act, the Company may pass a resolution without a general meeting being held if all Shareholders (personally or by proxy, attorney or Representative) entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Shareholder or its proxy, attorney or Representative signs.

15.2 For the purposes of clause 15.1, separate copies of a document may be used for signing by Shareholders if the wording is identical in each copy.

15.3 Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.

## **16 APPOINTMENT AND REMOVAL OF DIRECTORS**

16.1 There must be a least eight (8) directors of whom:

- (a) Two must be appointed as Employer Directors by the Minerals Council – Coal Committee after nomination in accordance with clause 16.2;
- (b) Two (2) must be appointed as Employer Directors by the QRC after nomination in accordance with clause 16.2;
- (c) Three (3) must be appointed as Member Directors by the MEU after nomination in accordance with clause 16.3(b); and
- (d) One (1) must be appointed as a Member Director by the MEU after nomination by the Participating Unions in accordance with clause 16.3(c).

16.2 The following provisions apply to nomination and removal of Employer Directors:

- (a) Each Employer Director must be aged at least 18 years, eligible to be appointed under Relevant Law and have been nominated in writing as provided for in this clause.
- (b) The Employer Directors must be nominated and removed in such manner, by such method and in accordance with such regulations and procedures as may be determined by the Minerals Council – Coal Committee or the QRC as the case may be, having regard to Relevant Law, including such matters as:
  - (i) The date as at which an Employer Director will assume office and the term for which an Employer Directors will hold office, either generally or in any particular case;
  - (ii) eligibility, nominations and voting, and
  - (iii) the manner in which casual vacancies in the office of an Employer Director must be filled.
- (c) Failure to notify an Employer of or in relation to any matter relating to or affecting nomination of any Employer Director will not render that nomination ineffective.
- (d) The Board of Directors may vary the methods, regulations or procedures for nominating and removing Employer Directors.

16.3 The following provisions apply to nomination and removal of Member Directors:

- (a) Each Member Director must be aged at least 18 years, eligible to be appointed under Relevant Law and have been nominated in writing as provided for in this clause.
- (b) Three (3) Member Directors must be nominated and removed in such manner, by such method and in accordance with such regulations and procedures as may be determined by the MEU, having regard to Relevant Law, including such matters as:
  - (i) the date as at which a Member Director must assume office and the term for which a Member Director must hold office, either generally or in any particular case:
  - (ii) eligibility, nominations and voting; and
  - (iii) the manner in which casual vacancies in the office of a Member Director must be filled.
- (c) The fourth Member Director must be nominated by the following Participating Unions on a rotating basis in the order listed below:

- (i) APESMA
- (ii) CEPU
- (iii) AMWU

and may be removed by the Participating Union which appointed the Director. If the Member Director is removed more than 90 days prior to the expiry of their term as a Director, the same Participating Union must nominate a new Member Director to act in their place until the expiry of that term. If the Participating Union fails to nominate a new Member Director, the Participating Union next entitled to appoint a Member Director must nominate a new Member Director for the expiry of that term, without prejudice to their entitlement to appoint a Member Director at the expiry of that term under this clause.

- (d) Failure to notify a Member or Participating Union of or in relation to any matter relating to or affecting nomination of any Member Director will not render that nomination ineffective.
- (e) The MEU may vary the methods, regulations or procedures for nominating and removing the three (3) Member Directors referred to at clause 16.3(b) above and the Participating Unions may vary the methods, regulations or procedures for nominating the Member Director referred to at clause 16.3(c) above and the Board of Directors must notify all fund members of the methods, regulations and procedures in relation to the nomination, election and removal of Member Directors, (including any changes to those methods, regulations and procedures) as required or permitted by Relevant Law.

16.4 A Director will hold office until the earliest of:

- (a) that Director's retirement from that office by notice in writing given to the Board of Directors;
- (b) the date on which that Director's term of office expires being:
  - (i) a period of four (4) years from the date on which the Director was appointed to that office or such other period as may be determined by Members pursuant to clause 16.4A; or
  - (ii) the date on which that Director's appointment to such office otherwise ceases in accordance with clause 16.2 or 16.3, whichever is relevant;
- (c) that Director's disqualification from that office by operation of law or that Director becoming a disqualified person as that term is defined in the Relevant Law;

- (d) that Director no longer meeting a condition of their appointment or no longer satisfying any eligibility criteria that had to be met for that Director to be appointed;
- (e) that Director failing, in the opinion of the Board of Directors, to be a “fit and proper person” with the meaning of the Relevant Law subject to any policy that the Board of Directors may have in place from time to time;
- (f) that Director’s death;
- (g) in the case of a Member Director nominated under clause 16.3(b), that Director’s removal from office by the MEU in accordance with that provision;
- (h) in the case of a Member Director nominated under clause 16.3(c), that Director’s removal from office by the relevant Participating Union in accordance with that provision; and
- (i) in the case of an Employer Director, that Director’s removal from office by the Minerals Council – Coal Committee or by the QRC, as appropriate, in accordance with clause 16.2

A Director who ceases to hold office pursuant to this clause 16.4 will, if otherwise eligible, be entitled to again be nominated or appointed as a Director.

16.4A The Members may determine for the purposes of clause 16.4(b)(i) that the term of office of a Director may be a period other than four (4) years and the term of office of a Director may be varied by the Members during that term of office, by way of extension or reduction, at any time, subject to Relevant Law.

16.5 In the event that a Director ceases to hold office otherwise than on the normal expiry of the Director’s term of office:

- (a) in the case of a Member Director, a replacement Director will be appointed by MEU after nomination in accordance with clause 16.3; or
- (b) in the case of an Employer Director, a replacement Director will be appointed by the Minerals Council – Coal Committee or by the QRC, as appropriate, in accordance with clause 16.2.

A person appointed to fill such a casual vacancy must hold office for the unexpired portion of the term of office and otherwise on the same conditions as the Director in respect of whom the vacancy has occurred unless otherwise determined by the Board of Directors at the date of appointment.

16.6 (a) a Director may, with the approval of the other Directors appoint an alternative (Alternative Director) to exercise some or all of the Director’s



powers for a specified period, which may include acting at one or more specified meeting of the Directors.

- (b) The Directors, as part of the approval referred to in clause 16.6(a) may determine rules and procedures which will apply to the Alternate Director when they are not acting as a Director, including their entitlement to receive Board of Directors papers and other confidential information in relation to the Company and the Fund, their use of that information and their attendance and conduct at meetings of the Board of Directors in the capacity as an observer.
- (c) An Alternate Director will be entitled to receive notices of meeting of the Board of Directors if the appointing Director so requests.
- (d) When the Alternate Director exercises the appointing Director's powers, the exercise of the powers will be as effective as if the powers were exercise by the appointing Director.
- (e) An appointing Director may terminate the Alternate Director's appointment at any time in writing, a copy of which must be given to the Company.

16.7 The Board of Directors may appoint an Independent Director in accordance with the Governing Rules.

## **17 REMUNERATION OF DIRECTORS**

17.1 A Director or officer of the Company may be reimbursed for travelling, accommodation and other expenses properly incurred when travelling to or from meetings of the Directors, a Committee or the Company or when otherwise engaged on the business of the Company.

17.2 The Directors may be paid such remuneration as may be determined by agreement between the Company and the Directors from time to time and in accordance with the Governing Rules.

## **18 POWERS OF DIRECTORS**

18.1 Subject to the provisions of the Corporations Act and of this Constitution, the management of the business of the Company is vested in the Directors, and they may exercise all the Company's powers which are not required by the Corporations Act or this Constitution or other laws to be exercised or done by the Company in general meeting.

18.2 Without limiting the generality of clause 18.1, the Directors may exercise all of the powers necessary to enable the Company to carry out its trusteeship of the Fund in accordance with the Governing Rules and Relevant Law.

18.3 Subject to Relevant Law, the Directors may exercise all the Company's powers to borrow and raise money and secure any debts, liabilities, contracts

or obligations incurred or undertaken by the Company in such manner and on such terms as they consider appropriate.

## **19 DIRECTORS' MEETINGS**

### **19.1 Quorum**

- (a) A quorum of Directors will be:
  - (i) two thirds of the Directors in office for the time being which number of Directors must include an equal number of Employer Directors and Member Directors, or
  - (ii) such other number of combination of Directors as may be determined by the Company from time to time being a number and combination which satisfied Relevant Law.
- (b) The Directors in office for the time being may continue to act notwithstanding any vacancy in their numbers, if there is a quorum of Directors.

### **19.2 Meetings and Resolutions**

- (a) The Directors may meet and adjourn and regulate their meetings as the Directors see fit and a meeting of the Directors at which a quorum is present will be competent to exercise all or any of the powers exercisable by the Board of Directors.
- (b) All questions arising at a meeting of the Board of Directors must be determined by resolution and a resolution is effective if carried by a majority comprising at least a quorum of Directors.
- (c) A written resolution signed by all Directors is as effective as a resolution passed at a meeting of the Board of Directors duly convened and held on the day and at the time when the document was last signed by a Director. Two or more separate documents each containing the same resolution in identical terms will together be deemed to constitute one document signed on the respective days on which the Directors signed the separate documents.
- (d) A Director may indicate his or her approval of a written resolution by email sent to each other Director and the Secretary and will be considered for the purpose of this clause 19.2(d) to be a signed resolution. However the acceptance of that email as a written resolution, may be subject to such reasonable enquiries as to its authenticity as the Secretary determines or as required under procedures approved by the Directors.
- (e) A Director may participate in a meeting of the Board of Directors by means of a conference telephone or similar communications equipment

whereby all persons participating in the meeting can hear each other, and participating in such a meeting in this manner will be deemed to constitute presence in persons at such meeting.

- (f) A Director, or the Secretary with the approval of a Director, may at any time convene a meeting of the Board of Directors by giving not less than seven (7 days) prior written notice to each of the Directors or other Directors, as the case may be. However all of the Directors may determine that a meeting of the Board of Directors may be held at shorter notice or with no notice.

### 19.3 Chairman of Directors

- (a) The Directors must elect one Director to the office of chairman for a period of two years, unless extended by the Directors. On the expiration of the term of office of a Director who has been elected chairman, the Directors must elect a Director to be chairman of Directors on the basis that, unless the Directors otherwise determine:
  - (i) if the retiring chairman was an Employer Director the replacement chairman must be a Member Director; and
  - (ii) if the retiring chairman was a Member Director the replacement chairman must be an Employer Director.
- (b) A Director appointed as chairman of Directors in accordance with clause 19.3(a) will hold office as chairman until:
  - (i) that Director retires as chairman by written notice given to the other Directors;
  - (ii) that Director ceases to be a Director;
  - (iii) that Director is removed as chairman by a resolution of the Directors; or
  - (iv) the term of office expires.
- (c) Any casual vacancy caused by the chairman ceasing to act during the period for the period of the chairman's appointment must be filled at the next meeting of Directors by a replacement chairman on the basis that, unless the Directors otherwise determine:
  - (i) if the retiring chairman was an Employer Director, the replacement chairman must be an Employer Director, and
  - (ii) if the retiring chairman was a Member Director, the replacement chairman must be a Member Director.

The replacement chairman will hold office until the end of the period of appointment of the chairman who has ceased to act.

- (d) The Directors may resolve to appoint a Deputy Chairman. If the Directors resolve to appoint a Deputy Chairman the provisions of clauses 19.3(a) to (c) will apply to the appointment, term of office and filling of a casual vacancy in respect of the Deputy Chairman as if references in those provisions to the Chairman were references to the Deputy Chairman, but subject to any modifications the Directors may set by resolution.
- (e) The chairman of Directors will act as chairman of each meeting of the Board of Directors attended by the chairman of Directors. If the chairman of Directors is not present at a meeting of the Board of Directors:
  - (i) if present, the Deputy Chairman will act as chairman;
  - (ii) if the Deputy Chairman is not present, a Director may be appointed by those present to act as chairman of that meeting on the basis that, unless the Directors otherwise determine:
    - (A) if the chairman is an Employer Director, another Employer Director must be appointed as the replacement chairman; and
    - (B) if the chairman is a Member Director another Member Director must be appointed as the replacement chairman.

#### 19.4 Voting

Each Director present at a meeting of the Board of Directors will have one deliberative vote on any question. No Director may have a second vote.

### **20 DIRECTORS' INTERESTS**

20.1 Each Director must disclose his or her interests (whether direct or indirect) to the Company in accordance with the Corporations Act and the Secretary must record the declaration in the minutes of the relevant Directors' meeting.

20.2 Subject to clause 20.1, a Director:

- (a) may vote;
- (b) must be counted in any quorum at any relevant meeting; and
- (c) may attest the fixing of the Company's common seal to a document,  
  
even though the Director has (directly or indirectly) a personal material interest in respect of that matter.

20.3 Subject to the Corporations Act (despite the Director's office and the fiduciary relationship established by it), a Director:

- (a) is not disqualified from:
  - (i) that office because of membership of a superannuation fund of which the Company is the trustee;
  - (ii) contracting with the Company either as vendor or purchaser;
  - (iii) being employed by the Company; or
  - (iv) acting in any capacity (except that of Auditor) to or in respect of the Company;
- (b) may enter into a contract with the Company and participate in any association, institution, fund, trust or scheme for the past or present employees or Directors of the Company, a Related Body Corporate of the Company or any of their respective predecessors in business or their dependants or persons connected with them; and
- (c) may retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.

20.4 A contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.

## **21 COMMITTEES**

21.1 The Directors may delegate any of their powers to:

- (a) a Committee;
- (b) a Director;
- (c) an employee of the Company; or
- (d) any other person.

21.2 A Committee or person to which any powers have been delegated must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

21.3 A Committee or person to which any powers have been delegated may be authorised to sub-delegate all or any of the powers for the time being vested in it.

21.4 Meetings of any Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable

and are not inconsistent with any directions of the Directors.

21.5 The Directors may revoke the delegation at any time.

## **22 VALIDITY OF ACTS OF DIRECTORS**

All acts of the Directors, a Committee or a person acting as a Director or Committee or a member of a Committee are valid even if it is afterwards discovered that:

- (a) there was some defect in the appointment or qualification of them or any of them; or
- (b) they or any of them were disqualified or had vacated office.

## **23 MINUTES**

23.1 The Directors must cause minutes to be made of all meetings of the Board of Directors, including:

- (a) all appointments of Directors and officers;
- (b) the names of the Directors present at all Directors' meetings and meetings of Committees;
- (c) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Committees;
- (d) all resolutions passed by the Directors;
- (e) all orders made by the Directors and Committees;
- (f) all disclosures of interests made under clause 20; and
- (g) any other records in relations to any other matters concerning its role as trustee of the Fund which are required by Relevant Law.

23.2 Minutes must be signed by the Chairman of the meeting or by the Chairman of the next meeting of the relevant body, and if so signed will as between the Directors be conclusive evidence of the matters stated in such minutes.

## **24 APPOINTMENT OF ATTORNEY**

24.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the agent or attorney of the Company:

- (a) for the purposes;

- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions;

determined by the Directors.

24.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of any person whether nominated directly or indirectly by the Directors.

24.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

24.4 The Directors may appoint attorneys or agents by facsimile transmission or electronic notification to act for and on behalf of the Company.

## **25 SECRETARY**

25.1 The Directors may appoint at least one person as a Secretary on such terms and conditions and remuneration as they consider appropriate. No person may become a Secretary if he or she is disqualified from office by Relevant Law or any other law.

25.2 The Directors may remove the Secretary.

25.3 The Secretary is entitled to attend all Directors' and general meetings.

## **26 COMMON SEAL**

26.1 The Company may but need not have a common seal. The Directors must provide for the safe custody of the common seal (if any) in such manner as they consider appropriate.

26.2 The common seal may be affixed to a document only by the authority of the Directors or a Committee authorised by the Directors to do so.

26.3 Every document to which the common seal is affixed must be signed by a Director and countersigned by the Secretary or a second Director or some other person appointed generally or in a particular case by the Directors for that purpose.

26.4 Promissory notes, cheques or other negotiable instruments must be signed or otherwise executed on behalf of the Company by two Directors or one Director and one Secretary unless the Directors otherwise determine.

## **27 INSPECTION OF BOOKS**

The Directors and Shareholders may at any time inspect the books and documents of the Company or any of them. Subject to the Corporations Act, no other person may inspect such books and documents unless authorised to do so by the Directors.

## **28 RESERVES**

28.1 The Directors may set aside out of profits an amount by way of reserves as they think appropriate to be applied for any purpose for which profits of the Company may be properly applied.

28.2 Pending any such application, the Directors may invest or use the reserves in the business of the Company or in other investments or dispose of all or any part of the reserves as they think fit.

## **29 DIVIDENDS**

The Directors must not distribute any profits of the Company by way of dividend.

## **30 NOTICES**

30.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:

- (a) serving it on the person; or
- (b) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

30.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the day after the day on which it was posted.

30.3 A notice sent by facsimile transmission or electronic notification is taken to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (b) on the day after its despatch.



## **31 WINDING UP**

If the Company is to be wound up, the liquidator may, subject to approval by special resolution, vest the whole or any part of the assets (after the satisfaction of all debts and liabilities) of the Company in trustees on such trusts as are consistent with a wind up of the Fund under the Governing Rules. No assets of the Company may be paid or distributed among the Shareholders (either on winding up or otherwise) except to the extent that a Shareholder is a beneficiary under such a trust.

## **32 INDEMNITY**

- 32.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been a Secretary, Director, Auditor, Representative, agent or other officer of the Company or a subsidiary against any liability (other than a liability for legal costs) incurred by that person as such an officer of the Company or a subsidiary.
- 32.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been a Secretary, Director, Auditor, Representative, agent or other officer of the Company or a subsidiary against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company or a subsidiary.

## **33 PARAMOUNT PROVISION**

The Company must comply with Relevant Law and Relevant Law prevails over any conflicting provisions in the Constitution.

## **34 INSURANCE**

The Company may arrange insurance in respect of any Director, Secretary or officer in respect of any liability incurred while acting in their office to the extent permitted by the Corporations Act.